No. 25-1311

IN THE
Supreme Court of the United States

APPLE INC.,
Petitioner,
v.
EPIC GAMES, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF SPOTIFY USA INC., MATCH GROUP, INC., AND MICROSOFT CORPORATION AS *AMICI CURIAE* SUPPORTING RESPONDENT

AARON M. PANNER
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, PLLC
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

DOUGLAS J. DIXON
HUESTON HENNIGAN LLP
620 Newport Center Drive
Suite 1300
Newport Beach, CA 92660
(949) 226-6741

JEFFREY A. LAMKEN
Counsel of Record
MOLOLAMKEN LLP
The Watergate, Suite 500
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
(202) 556-2000
jlamken@mololamken.com

Counsel for Amici Curiae
(Additional Counsel Listed on Inside Cover)

BRAM ALDEN
TATE HARSHBARGER
HUESTON HENNIGAN LLP
523 West 6th Street
Suite 400
Los Angeles, CA 90014
(213) 788-4340

EUGENE A. SOKOLOFF
MOLOLAMKEN LLP
300 North LaSalle St.
Chicago, IL 60654
(312) 450-6700

JARED LOOPER
MOLOLAMKEN LLP
430 Park Avenue
New York, NY 10022
(212) 607-8160

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE* [1]

Amici Spotify USA Inc., Match Group, Inc., and Microsoft Corporation offer some of the most popular and widely downloaded mobile applications, or "apps." They bring a unique perspective to the legal, economic, and technological issues in this case. For years, *amici* were subject to the measures found unlawful in this case. That prejudice continued when Apple attempted to end-run the district

[1] Pursuant to this Court's Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief, and that no person other than *amici* and their counsel made such a monetary contribution.

court's injunction through the commission and design restrictions at issue here. Because those restrictions affected their business models in different ways, *amici* can speak to the effect of Apple's conduct on a broad spectrum of app developers.

Spotify USA Inc. offers one of the world's most popular audio-streaming services. Since 2016, Spotify's app has been what Apple calls a "reader" app. Under Apple's rules, reader apps cannot offer or enable any in-app purchases on Apple devices; they offer subscriptions and other features through the app developers' own websites, which can then be accessed in developers' apps. Yet Apple historically prohibited reader apps like Spotify from providing basic pricing information or directing users to the developers' own websites. The injunction entered in this case would have enabled Spotify, for the first time in nearly a decade, to communicate basic pricing and purchasing information to U.S. users directly in the Spotify app. But Apple's response to the injunction again restricted Spotify's ability to communicate with its users, inhibiting the very price competition the injunction was meant to protect.

Match Group, Inc. ("Match Group") owns a portfolio of companies that operate dating services around the world, including but not limited to Tinder and Hinge. These services help people make meaningful connections and encourage users who match online to date offline. Match Group's portfolio apps are free to download. Users may purchase subscriptions that unlock additional features or one-time features sold à la carte. In addition to offering those services for purchase directly in their apps, using Apple's payment platform, many of Match Group's portfolio brands, such as Tinder, have long sold the same services on their own websites, using their own payment plat-

form. Before the injunction, Apple's rules barred Match Group from including any language in its apps that might tell users about these alternative purchasing options. After the injunction, Apple's new restrictions made using links to off-app purchasing mechanisms prohibitively expensive, as Match Group told Apple at the time.

Microsoft is a leading innovator in computer hardware, software, and security features; it has been creating software platforms and application programming interfaces for application developers for more than 40 years. Microsoft's mission is to enable individuals and businesses throughout the world to realize their full potential by creating technology that transforms the way people work, play, and communicate. Microsoft develops, manufactures, licenses, sells, and supports a wide range of programs, devices, and services, including Windows, Microsoft Azure, Microsoft 365, Surface, Xbox and Xbox Game Pass, and Bing, as well as a variety of commercial and enterprise technologies powered by artificial intelligence. Microsoft products compete with Apple's. For example, like respondent Epic Games, Inc. ("Epic"), Microsoft sells games for distribution on Apple devices. Responding in part to the district court's injunction, Microsoft undertook significant work to prepare new consumer offerings. Apple's failure to comply with the injunction prevented Microsoft from delivering those offerings.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has held that conduct constitutes contempt if there is no "*fair ground of doubt*" the conduct violates the court's decree. *Taggart* v. *Lorenzen*, 587 U.S. 554, 561 (2019). Here, the plain language of the district court's injunction covered Apple's conduct under any standard. The injunction barred Apple from "prohibiting" develop-

ers from including in their apps "buttons, external links, or other calls to action that direct customers to purchasing mechanisms" other than Apple's own in-app purchasing platform. Pet. App. 166a. But Apple then turned around and imposed design restrictions—such as banning visually discernable buttons and requiring developers to display needless "scare screen" warnings—that did precisely that. Pet. App. 5a-6a, 24a. Apple joined those restrictions with a commission structure that rendered any effort to direct users to alternative platforms prohibitively expensive. Pet. App. 5a, 20a.

The district court found—and the Ninth Circuit agreed—that Apple adopted those measures after "modeling precisely the amount of friction needed in a transaction to ensure that link-out transactions [*i.e.*, transactions completed outside of the app] were not viable for a developer." Pet. App. 139a; Pet. App. 24a. Apple then tried to cover its tracks with what the district court called "abus[ive]" privilege claims and a "reverse-engineered, litigation-ready justification" that bore no relation to Apple's actual decision-making process. Pet. App. 7a, 66a-67a, 141a. Despite Apple's attempts at evasion, the lower courts found Apple's restrictions were "prohibitive." Pet. App. 20a. As the case comes to this Court, those findings, which Apple does not contend are clearly erroneous, put Apple's conduct squarely within the injunction's scope.

Apple contends that the "four corners" of the injunction do not prohibit its restrictions. Apple. Br. 35. But to "prohibit" does not just mean to "forbid by rule." The plain and ordinary meaning of "prohibit," this Court has recognized, encompasses conduct that has the *effect* of hindering or preventing something. See *Ysleta Del Sur Pueblo* v. *Texas*, 596 U.S. 685, 697 (2022). A prohibition is still a prohibition whether imposed expressly (*de jure*) or through

conditions designed to achieve the same effect (*de facto*). Accordingly, this Court need not decide whether violation of an injunction's "spirit" alone would be sufficient to support a finding of contempt. Or it could disapprove any such notion without altering the judgment below. The "spirit" of the injunction here was simply unnecessary to the case's outcome. This Court, moreover, has long held that an injunction must be read in light of the decision it effectuates. See *Terminal R.R. Ass'n* v. *United States*, 266 U.S. 17, 29 (1924). Here, that decision could not have been clearer. The district court found that Apple's restrictions violated California's Unfair Competition Law "*because*" they "ha[d] the effect of *preventing substitution* among platforms for transactions." J.A. 377 (emphasis added).

Apple's post-injunction conduct was designed to achieve, and did in fact produce, that very same result by other means. Its scheme prevented substitution just as effectively as the express contractual prohibition it replaced. Such obvious efforts at circumvention—switching from one set of prohibitions to another—are impermissible. Parties do not have "immunity from civil contempt" simply "because the plan or scheme which they adopted was not specifically enjoined." *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949). Here, the injunction barred Apple from "prohibiting" developers from using "buttons, external links, or other calls to action that direct customers to" alternative "purchasing mechanisms." Pet. App. 166a. Moving from a contractual prohibition to design and pricing rules with the same prohibitive effect is the epitome of contempt.

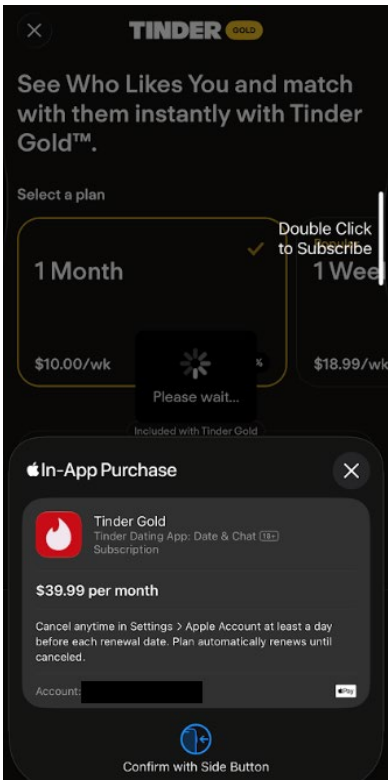
Amici have first-hand experience with the effects of Apple's conduct and evasion efforts. For businesses like *amici*'s that depend on subscription revenue and other

digital purchases, Apple's new restrictions were no different from the unlawful rules they replaced—and, in some cases, worse. Apple knew from experience that a new, 27% commission on "linked-out purchases" "'in practice made all alternatives to [its in-app purchasing platform] economically non-viable.'" Pet. App. 20a, 75a n.22. And Apple fully expected that the design restrictions it imposed would make links to alternative platforms "as hard to use as possible" so that users would abandon the link-out offer experience. Pet. App. 24a. No fair reading of the injunction would authorize that conduct. Affirmance is necessary to vindicate the bedrock importance of respect for the judicial system and the efficacy of its decrees.

BACKGROUND

Apple allows users to download applications, or apps, for use on their iPhones, iPads, and other devices through its App Store. J.A. 139. The App Store offers a wide variety of apps from third-party developers, J.A. 130, including audio-streaming apps like Spotify, dating apps like Tinder or Hinge, and gaming apps like the Xbox App.

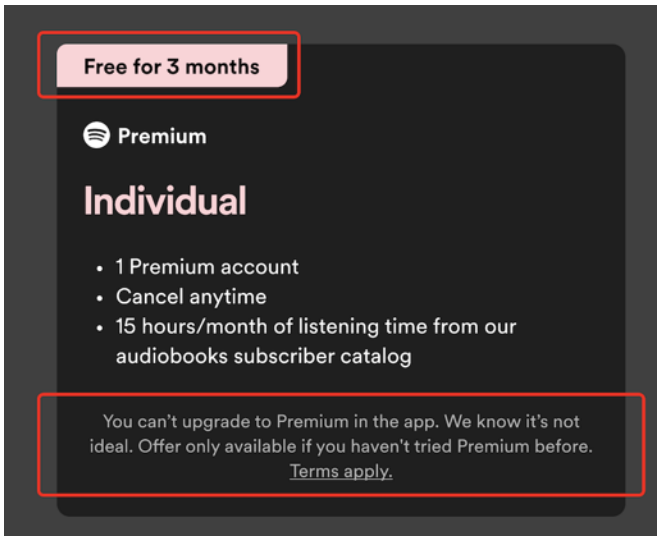
1. Many of the apps on Apple's App Store are free to download. Users may then be prompted to purchase access to premium features, digital products such as game tokens, or subscriptions. But Apple tightly restricts the options users have when making such purchases. If users want to purchase such goods or services directly from within a developer's app, they must use Apple's "in-app purchase," or "IAP," platform. Apple makes in-app purchases easy. For example, a user wishing to make an in-app purchase on Tinder on an Apple device would see a screen like this:



But not all developers offer in-app purchases, and not all developers want to. Apple generally charges a 30% commission on in-app purchases of digital goods or services, and 15% on auto-renewing subscriptions after their first consecutive year. See J.A. 140-141; J.A. 137 n.198.

Because Apple charged no commission on purchases made outside of apps, developers could offer lower prices, for example, on their own websites. Pet. App. 69a. But Apple barred developers from including information in their apps to inform users where or how to make such purchases. Those "anti-steering" rules prohibited mechanisms for directing customers to purchasing methods other than in-app purchase. J.A. 135. That had bizarre results. Spotify, for example, could tell its users that its premium

subscriptions were *not* available through Apple. But it could not tell its users that premium subscriptions *were* available on Spotify's own website, provide a link to that website, or even tell users how much it would cost to buy such a subscription:



The district court found that Apple's anti-steering provisions violated California's Unfair Competition Law—a determination that Apple can no longer (and does not) challenge here. Pet. App. 56a. To remedy that violation, the court enjoined Apple from "prohibiting developers" from "including in their apps * * * buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing[.]" Pet. App. 166a. The Ninth Circuit affirmed the injunction. Pet. App. 4a. And this Court denied Apple's petition for a writ of certiorari. Pet. App. 7a.

2. After the injunction issued, Apple filed a notice of compliance. J.A. 500-522. Apple explained that it had "implement[ed] new rules" purporting to give developers "the option of informing consumers, both within and outside

the app, about alternative purchasing mechanisms in addition to IAP." J.A. 501. Developers could apply for Apple's permission to "'provide a link in their app to a website the developer owns or maintains responsibility for in order to purchase'" digital goods and services. J.A. 506. But that permission came with *six* conditions.

First, Apple limited where in their apps developers could place links to off-app purchases. Links could appear "on no more than one app page * * * in a single, dedicated location on such page, and may not persist beyond that page[.]" J.A. 514. Apple barred links from any page used to "initiate a purchase using in-app purchase." J.A. 514. Thus, a developer could not display a link to an alternative purchasing option on a page where a user was browsing items or checking out—the most natural place to tell users about their purchase options.

Second, Apple controlled how links appear. A link could appear only as a so-called "plain button"—essentially text with no border, shading, or background to make it stand out as a button from the rest of the page. Pet. App. 5a-6a. The image illustrates the effect:



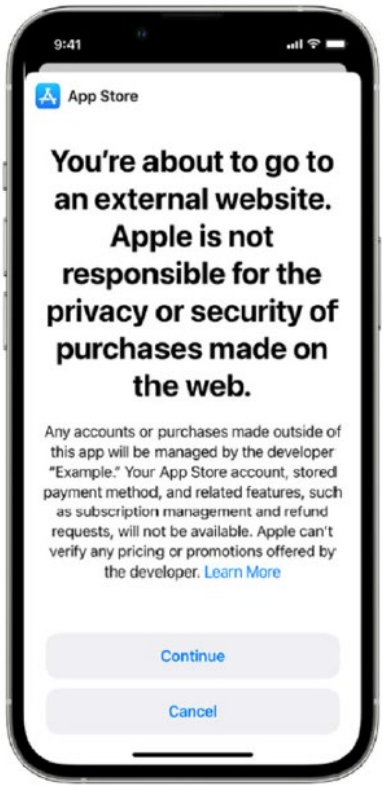
J.A. 534.

Third, Apple dictated the language a developer could use alongside the link. Developers had to choose from five pre-approved templates:

> Purchase template:
> Purchase from the website at www.example.com
>
> Special offer template:
> For special offers, go to www.example.com
> For a special offer, go to www.example.com
>
> Lower price template:
> Lower prices offered on www.example.com
> Lower price offered on www.example.com
>
> Percent off template:
> To get XX% off, go to www.example.com
>
> Specific price template:
> Buy for $X.XX at www.example.com

J.A. 534.

Fourth, Apple required developers to display a so-called "system disclosure sheet," also called a "scare-screen," whenever a user tapped an external link. J.A. 511. Apple required a full-page warning stating, in large type, that Apple is "not responsible for the privacy or security of purchases made" outside of its in-app purchasing platform:



J.A. 512.

Fifth, Apple barred apps from using external links to transmit information to the websites they reached. Pet. App. 6a. The link could not, for example, keep users signed in or take them straight to the items they wanted. Users who managed to find the link in the app and click past the "scare-screen" warning would arrive only at a generic web page on the developer's website, where they would have to sign in again or search for the item from scratch.

Finally, Apple imposed a new commission. For the first time, Apple charged commissions on purchases users made *outside* of their apps—not just on purchases made

using Apple's in-app purchasing platform. In particular, Apple demanded a 27% commission on any purchase made within seven days after a user clicked on a link inside an app, and 12% on subscription renewals after the first year. J.A. 518. Those rates were just 3 percentage points below Apple's 30% and 15% rates on in-app purchases made using Apple's payment processing. And the commission applied to apps, like Spotify, that did not use in-app purchasing and so would not otherwise have been subject to any commission. As explained below, the district court found, and the court of appeals agreed, that the new commission was "prohibitive" and deliberately rendered linked-out purchases economically non-viable.

ARGUMENT

This Court has made clear that a party engages in contempt when there is no "*fair ground of doubt*" that its conduct violates a court's decree. *Taggart* v. *Lorenzen*, 587 U.S. 554, 561 (2019). That standard incorporates the principle that an injunction's "terms" must be "read in the light of the issues and the purpose for which the suit was brought." *Terminal R.R. Ass'n* v. *United States*, 266 U.S. 17, 29 (1924). And an injunction, like "[e]very affirmative order in equity[,] carries with it the implicit command to refrain from action designed to defeat it." *NLRB* v. *Deena Artware, Inc.*, 361 U.S. 398, 413 (1960) (Frankfurter, J., concurring). Apple's conduct—implementing prohibitive commissions and imposing design restrictions to thwart linked-out purchases—is contemptuous under those established standards. The record makes that clear. The findings below, which Apple does not contend are clearly erroneous, make that clear. *Amici*'s own extensive industry experience—including experience under Apple's restrictions—confirms that as well.

I. The Injunction Barred Efforts To Prohibit Developers From Directing Customers To Alternative Platforms

There is no longer any dispute that Apple violated state unfair competition law and was properly enjoined as a result. The district court found that the rules Apple had imposed on developers violated California's Unfair Competition Law ("UCL") "because" they "ha[d] the effect of *preventing substitution* among platforms for transactions." J.A. 377 (emphasis added). Consistent with that determination, the court issued an injunction barring Apple from "prohibiting developers" from including in their apps "buttons, external links, or other calls to action that direct customers to purchasing mechanisms" other than Apple's own "In-App Purchasing" platform. Pet. App. 166a.

The district court did not limit the injunction to the precise contractual prohibitions Apple had previously used to impede competition. It proscribed *any means* of "prohibiting" developers from using buttons, links, and other calls to action that direct customers to alternative purchase platforms. It thus did not leave Apple free to prohibit "buttons, external links, or other calls to action that direct customers to purchasing mechanisms" by imposing new restrictions making them commercially non-viable or economically prohibitive.

Apple's contention—that the injunction covers only the original misconduct the district court found to violate California's UCL—is untenable. *E.g.*, Apple. Br. 31-35, 38-46. It would reduce injunctions to an endless cat-and-mouse game in which courts are always one step behind ever-shifting efforts to achieve the same unlawful end. The law does not require such an absurd result.

A. The Plain Text of the Injunction Encompasses Both Literal and Functional Prohibitions on Links to Non-IAP Purchasing Mechanisms

As the decision below explains, the parties' dispute in this case "turns on the meaning of the key word 'prohibit.'" Pet. App. 19a. To "prohibit" encompasses more than merely to forbid by rule—it also includes "'[t]o prevent, preclude, or severely hinder.'" *Ibid.* (quoting *Prohibit*, Black's Law Dictionary (12th ed. 2024)). Ordinary usage confirms that "prohibit" encompasses *de facto* prohibitions as much as *de jure* ones.

"Often enough in ordinary speech," this Court has explained, "to *prohibit* something means to 'forbid,' 'prevent,' or 'effectively stop' it, or 'make [it] impossible.'" *Ysleta Del Sur Pueblo* v. *Texas*, 596 U.S. 685, 696 (2022) (collecting authorities). Dictionary definitions are in accord. See *Prohibit*, Webster's Second New International Dictionary (1953) (defining "prohibit" as "[t]o stop or prevent (a person); to render impossible (an action); to hinder; debar"); *Prohibit*, Webster's Third New International Dictionary (1993) (defining "prohibit" as "to prevent from doing or accomplishing something: effectively stop"); *Prohibit*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/prohibit (defining "prohibit" as "to prevent a particular activity by making it impossible," as in "[t]he loudness of the music prohibits serious conversation in most nightclubs"); *Prohibit*, Collins English Dictionary, https://www.collinsdictionary.com/us/dictionary/english/prohibit (defining "prohibit" as "to prevent; hinder"); *Prohibit*, Merriam-Webster, https://www.merriam-webster.com/dictionary/prohibit (defining "prohibit" as "to prevent from doing something" and "preclude").

Here, the injunction's text incorporates that ordinary meaning. The injunction "restrain[s] and enjoin[s]" Apple "*from prohibiting developers*" from "including * * * buttons, external links, or other calls to action that direct customers to [alternative] purchasing mechanisms." Pet.App.166a (emphasis added). That language bars Apple from preventing "*developers*" from taking certain actions. It does not specify the *means* Apple is enjoined from using to effect the prohibition; it is framed in "general[ ]" terms to prevent "further violations" beyond the original conduct the district court found unlawful. *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949). The injunction thus is not limited to the kind of contractual proscription against developer activities the district court found unlawful. Nor is it limited to design policies or restrictions. It bars *all* means Apple might employ to "prohibit[ ]" developers' use of "buttons, external links, or other calls to action that direct customers to [alternative] purchasing mechanisms." Pet. App. 166a.

B. Context Reinforces the Practical Meaning of the Injunction's Text

This Court has long recognized that an injunction's "terms" must be "read in the light of the issues and the purpose for which the suit was brought." *Terminal R.R. Ass'n*, 266 U.S. at 29; *Milk Wagon Drivers Union of Chicago, Loc. 753* v. *Meadowmoor Dairies, Inc.*, 312 U.S. 287, 298 (1941) ("[A]n injunction must be read in the context of its circumstances."). That does not mean courts can construe injunctions to reach conduct their terms do not encompass, much less disregard the injunction's text in favor of an abstract concept like "spirit." Just as Congress enacts statutes, not intentions, *FS Credit Opportunities Corp.* v. *Saba Cap. Master Fund, Ltd.*, 608 U.S. 608, 623 (2026), courts issue decrees, not spirits. But text

appears in a context—often a problem to be redressed or a historical tradition—that can cast further light on its meaning. *E.g.*, *Fischer* v. *United States*, 603 U.S. 480, 491-492 (2024) (interpreting Sarbanes-Oxley Act provision in light of issues "that prompted the legislation in the first place"); *Taggart*, 587 U.S. at 560-562 (interpreting Bankruptcy Code's provision "specifying that a discharge order 'operates as an injunction' " in light of longstanding limitations on contempt power). Here, that context confirms that the text extends to requirements that prohibit—*de jure* or *de facto*—developers from using in-app buttons, external links, or calls to action to direct their users to alternative purchasing platforms.

This suit was filed to challenge Apple policies that prevented app developers from offering their users alternative purchasing options. Epic had Article III standing to challenge those restrictions, the district court found, because Apple's policies effectively meant that Epic "could not distribute games directly to consumers at lower cost" and thus could not "earn revenues from [its] competing store." J.A. 368; see J.A. 486 (absent restrictions, consumers would "have the ability to substitute to the platform with * * * lower prices"). "While some consumers may want the benefits Apple offers" through its App Store, the court found "Apple actively denies them the choice" by preventing developers from even mentioning price or other purchasing options. J.A. 286. That violated California's UCL both because it "prevent[ed] informed choice among users of the [Apple] platform" *and* "because [Apple's] anti-steering *has the effect of preventing substitution* among platforms for transactions." J.A. 376-377 (emphasis added).

Especially read in light of this suit's purpose and the district court's rulings—the "issues and the purpose for

which the suit was brought"—the injunction plainly encompasses the restrictions Apple substituted in response. Apple's original UCL violation may have taken the form of *contractual* limits on developers' ability to employ alternative purchasing options. But Apple's decision to use contractual restrictions was not what made the conduct unlawful. The problem was that those limitations "prevent[ed] *substitution* among platforms for transactions." J.A. 377 (emphasis added). The injunction solved that problem by precluding *any* steps Apple might take to prohibit developers' use of "buttons, external links, or other calls to action" to facilitate platform substitution.

It is a "fundamental principle * * * that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC* v. *Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Here, Apple received notice it could not "prohibit developers from" including link-outs to non-Apple purchasing mechanisms. That notice came from the decree itself, and was reinforced by the rulings the decree effectuated and the purpose for which the suit was brought. Pet. App. 166a. Indeed, the district court found "Apple *knew* it was violating the Injunction," but decided to press on. Pet. App. 135a (emphasis added).

C. Longstanding Anti-Circumvention Principles Are to the Same Effect

Longstanding equitable principles support the same conclusion. "Every affirmative order in equity carries with it the implicit command to refrain from action designed to defeat it." *Deena*, 361 U.S. at 413 (Frankfurter, J., concurring). Parties do not have "immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined." *McComb*, 336 U.S. at 192. Requiring courts to repeatedly enter new injunctions or mod-

ify existing ones to bar each new circumvention effort would perpetuate "a whole series of wrongs" and mean that "a decree of enforcement goes for naught." *Id.* at 193; see also *Regal Knitwear Co.* v. *NLRB*, 324 U.S. 9, 14 (1945) (extending injunction to "aiders and abettors" to prevent party's efforts to "nullify a decree"). Equity does not require courts to amend their injunctions every time the enjoined party comes up with a new means to achieve the same forbidden ends.

That anti-circumvention principle pervades the law. For example, when applying tax laws, courts disregard a transaction's form where respecting it would "exalt artifice above reality and * * * deprive the statutory provision in question of all serious purpose." *Gregory* v. *Helvering*, 293 U.S. 465, 470 (1935). In patent law, when analyzing infringement, courts interpret patent claims to extend beyond their literal coverage under the "doctrine of equivalents" to prevent the "unscrupulous copyist [from] mak-[ing] unimportant and insubstantial changes and substitutions in the patent which, though adding nothing, would be enough to take the copied matter outside the claim, and hence outside the reach of the law." *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 339 U.S. 605, 606-607 (1950); see *Sturges* v. *Crowninshield*, 17 U.S. (4 Wheat.) 122, 204, 206 (1819) (Contract Clause's "prohibition" on laws "'impairing the obligation of contracts'" must be read "not only to prohibit the use of particular means by which it might be effected, but to prohibit the use of any means by which the same mischief might be produced."). Courts need not tolerate unscrupulous behavior or artifice when it comes to injunctions, either. See *Deena*, 361 U.S. at 413 (Frankfurter, J., concurring).

This case involves precisely such artifice. Enjoined from prohibiting developers from directing users to alter-

nate platforms, Apple imposed commissions and design restrictions it *knew* would render those alternatives economically and practically non-viable. See pp. 20-22, *infra*. Forbidden to keep developers from adding buttons on their apps directing users to alternative platforms, Apple made a rule requiring such buttons to be the same color as the background—preventing them from appearing as buttons at all. "Apple's own witness," the district court found, could think of no other reason for that design choice "than to stifle competition." Pet. App. 98a. And Apple prepared a sham "study" to "mislead" the district court about its calculated defiance. Pet. App. 85-86a.

II. Apple Cannot Show A Fair Ground Of Doubt That Its Conduct Violated The Injunction

This Court has recognized that taking "a calculated risk when under the threat of contempt," knowing "full well the risk of crossing the forbidden line," shifts "the burden of any uncertainty" about the injunction's scope to the alleged contemnor. *McComb*, 336 U.S. at 193. But the Court need not go that far to affirm here. Even if the Court jettisons the Ninth Circuit's "spirit-of-the-injunction" discussion, see Pet. App. 12a, it may "affirm on any ground that the law and the record permit and that will not expand the relief granted below," *Thigpen* v. *Roberts*, 468 U.S. 27, 30 (1984). Or it may choose to remand for reconsideration without the Ninth Circuit's superfluous reference to "spirit." Either way, the record is replete with findings that all but compel affirmance—or would certainly justify the same result in the event of remand.

A. The Lower Courts' Findings Establish That Apple Violated the Injunction

The district court found, and the Ninth Circuit agreed, that Apple's design restrictions and new 27% commission on

external purchases effectively prohibited the offer of purchases—and were deliberately designed to do so.

1. The district court found that "the overall effect" of the design restrictions was "quite literally, intentional *de facto* prohibition." Pet. App. 139a n.66. Apple, it found, "model[ed] the tipping point where external links would cease to be advantageous for developers," Pet. App. 99a, "ensur[ing] that link-out transactions were not viable for a developer," Pet. App. 139a. Two of the requirements—the so-called "plain-button" requirement and the call-to-action restriction—were "explicitly at odds with the Injunction." Pet. App. 139a-140a. The link-placement restriction, the court determined, "present[ed] serious problems for developers' ability to compete with Apple's IAP and Apple knew it." Pet. App. 93a. The "scare-screen" requirement was similarly intended "to deter users from using" linked-out purchases, Pet. App. 99a, and it "chilled consumer conduct," Pet. App. 105a. As for the static-URL requirement, the court found Apple "understood well" that it would deter users and that Apple "capitalized on that option." Pet. App. 108a.

The Ninth Circuit agreed. It found Apple had created "an ensemble of requirements that significantly reduce[d] developers' ability to steer consumers to" linked-out purchases. Pet. App. 24a-25a. The "plain-button" requirement and the call-to-action restriction violated the "strict letter" of the injunction, Pet. App. 22a-23a; the link-placement restriction had the "practical effect" of prohibiting linked-out purchases, Pet. App. 24a; the "scare-screen" requirement was "designed to defeat the Injunction," *ibid.*; and the static-link requirement "ma[de] external links as hard to use as possible," *ibid.*

2. Apple did similar modeling to calculate a commission that would be economically prohibitive. The district court

found Apple's new commission violated "the literal text" of the injunction. Pet. App. 132a. The Ninth Circuit agreed that the commission had a "prohibitive effect," Pet. App. 20a—and with reason. The new commission "render-[ed] every linked-out transaction more expensive to a developer than an [in-app] transaction at 30% commission." Pet. App. 82a. That was by design. Apple took the 30% commission it charged on in-app purchases and applied a 3% cost-of-payments "discount." Pet. App. 5a, 73a. But Apple knew that "discount" would not cover actual costs. Pet. App. 5a, 79a. Bumble, an online dating app developer, advised Apple that payment processing fees average "'significantly'" higher than 4%. Pet. App. 75a. And the district court found Apple's "own internal assessment" reached the same conclusion. *Ibid.* The resulting commission, the court found, "was not viable for developers." Pet. App. 83a. Apple does not contend those findings are clearly erroneous.

While the fair-ground-of-doubt inquiry is an objective one, a party's subjective intent to violate the injunction can be relevant. See *Taggart*, 587 U.S. at 561-562. The contemnor's own understanding of the decree certainly is some evidence of how a decree would reasonably be read. Cf. *United States* v. *Atl. Refining Co.*, 360 U.S. 19, 22 (1959) (rejecting "strained construction" of consent decree that departed from the parties' "consistent" understanding). Here, the district court uncovered extensive evidence that Apple knew the 27% commission contravened the injunction. See pp. 20-21, *supra*. Apple also knew from experience that the commission it selected was prohibitive. It had imposed a similar commission in the Netherlands and Korea, achieving "virtually nonexistent adoption rates." Pet. App. 75a n.22. Ten months into the Netherlands program and four months into the Korea

program, just one developer had signed up for alternative payments, suggesting that imposing such a plan in the United States would likewise "dissuade any real developer participation." Pet. App. 76a-77a. An Apple executive present at the trial and familiar with the district court's opinion openly questioned whether a commission for linked-out purchases was allowed—but he was outvoted. Pet. App. 52a, 80a-81a. In deciding to adopt the 27% commission rate, Apple thus "*willfully* chose to ignore the Injunction." Pet. App. 17a, 134a-135a.

Having elected a commission it knew no economically rational developer could accept, Apple then attempted to mislead the district court by presenting a "reverse-engineered, litigation-ready justification." Pet. App. 7a, 66a-67a. The district court found that Apple hired Analysis Group, a consulting firm, to conduct a study on a new commission for linked-out purchases, but did not rely on the study's findings in setting the rate. Pet. App. 85a. Apple nevertheless presented Analysis Group's report as the purported rationale for the commission and rate, while attempting to conceal its real decision-making process—such as Apple's knowledge and consideration of the impact of the commission in setting the rate—from the court's review. Pet. App. 78a, 86a-87a. Indeed, the district court found Apple's witnesses lied on the stand about Apple's deliberative process. Pet. App. 86a-87a. Such "'deliberately furtive actions'" show consciousness of guilt. *District of Columbia* v. *Wesby*, 583 U.S. 48, 59 (2018); *Sibron* v. *New York*, 392 U.S. 40, 66-67 (1968) (same); *N.Y. Cent. & H.R.R. Co.* v. *United States*, 212 U.S. 481, 499 (1909) (jury may consider defendant's "'furtive and secret manner'" in determining guilt). Apple's resort to subterfuge demonstrates it knew its actions were contemptuous.

B. Apple and the Solicitor General Cannot Overcome the Lower Courts' Findings

Apple makes no attempt to show, and cannot show, clear error in the lower courts' findings. It certainly does not attempt to make the "very obvious and exceptional showing of error" that would warrant disturbing the consistent findings of two lower courts. *Exxon Co., U.S.A.* v. *Sofec, Inc.*, 517 U.S. 830, 841 (1996) (citing *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949)). That should be dispositive. It is also important: This Court, like all others, is bound by appellate standards of review. *Cooper* v. *Harris*, 581 U.S. 285, 309 (2017). Those standards ensure appropriate respect for the court "'better positioned'" to make the relevant determinations—and buttress trust in the judicial process. *U.S. Bank N.A. ex rel. CWCapital Asset Mgmt. LLC* v. *Village at Lakeridge, LLC*, 583 U.S. 387, 395 (2018).

1. The Solicitor General concedes that imposing "the functional equivalent of a prohibition" can "be [an] 'objectively unreasonable'" reading of the injunction. U.S. Br. 23. In other words, the Solicitor General accepts that *de facto* functional prohibitions on linked-out transactions can violate the injunction no less than *de jure* contractual ones. With respect to Apple's "prohibition on buttons other than 'plain buttons,'" for example, the Solicitor General agrees that Apple's restriction "ma[de] a plain button indistinguishable from an ordinary link." U.S. Br. 27. Apple's decision to "allow[] only 'plain buttons'" violated the injunction by "*in effect* allow[ing] only 'links' while prohibiting 'buttons.'" U.S. Br. 28 (emphasis added). Apple's "reading of the injunction," the Solicitor General explains, was thus "'objectively unreasonable.'" *Ibid.*

When addressing commissions, the Solicitor General again agrees that a sufficiently large commission can operate

as a prohibition. U.S. Br. 23. The Solicitor General's brief, however, posits only an astronomical commission—giving the example of a 300 percent commission—as "'objectively unreasonable.'" *Ibid.* But the Solicitor General cannot reconcile its position with the lower courts' finding that Apple's new 27% commission here *was* also a functional prohibition. The Solicitor General asserts that the Ninth Circuit affirmed that finding "based solely on" the view that 27% was "not sufficiently discounted," a pricing question the injunction supposedly does not reach. U.S. Br. 23-25. That misunderstands the district court's and the Ninth Circuit's reasoning. Those courts found the commission "prohibitive," not because of the particular considerations that went into setting the commission's level, but because that level "'in practice made all alternatives to [Apple's in-app purchasing platform] *economically non-viable*.'" Pet. App. 20a (emphasis added).[2]

The Solicitor General's argument, moreover, glosses over the fact that, before the injunction, purchases made on a developer's website carried *no commission at all*. Pet. App. 69a. For apps like Spotify, which had not used Apple's in-app purchase platform for nearly a decade, the new commission on *off*-app purchases was a sea change. See pp. 28-29, *infra*. The difference was not between 27% and 30%; it was between 27% and *nothing*. The record amply supported the district court's finding that the 27%

[2] Even if the injunction's text "does not address commissions" in *haec verba*, Pet. App. 34a n.9, Apple's 27% commission violates the injunction's plain terms because it stops developers from directing customers to other purchasing platforms—something the injunction *expressly* forbids. The courts below in no way treated every possible commission, or every possible measure that makes links less attractive, as contempt. The Ninth Circuit drew that line itself: "Apple did not charge any commission; it charged a prohibitive commission." Pet. App. 22a.

commission was economically prohibitive and that Apple chose it for precisely that reason.[3]

The district court made those findings after *two* sets of evidentiary hearings with live witness testimony, the first lasting six days and the second lasting three. Pet. App. 66a, 68a-69a. "Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility." Fed. R. Civ. P. 52(a)(6). If there are "two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson* v. *City of Bessemer City*, 470 U.S. 564, 574 (1985).

That goes double "[w]here an intermediate court reviews, and affirms, a trial court's factual findings." *Easley* v. *Cromartie*, 532 U.S. 234, 242 (2001); *cf. Glossip* v. *Gross*, 576 U.S. 863, 882 (2015) ("Our review is even more deferential where, as here, multiple trial courts have reached the same finding, and multiple appellate courts have affirmed those findings."). Under the "two-court rule," this Court will not disturb such findings in the absence of a "'very obvious and exceptional showing of error.'" *Exxon*, 517 U.S. at 841. The Solicitor General regularly invokes that rule, urging that it applies "'with particular rigor'" where, as here, the "'district court and court of appeals are in agreement as to what conclusion the record requires.'" U.S. Br. in Opposition, at 13, *Johnson* v. *United States*, No.

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[3] Apple asserts (at 39-40) that the effective commission is lower than 27% because that rate applies only to purchases made within seven days of a user clicking a link. The district court found no support for this claim, Pet. App. 77a n.25, and the Ninth Circuit did not disturb that finding. If anything, Apple's effective rate is higher because the seven-day rule captures purchases unrelated to the original click. See pp. 30-31, *infra*.

23-6496 (U.S.). But the Solicitor General's brief here does not mention clear error or the two-court rule. It thus effectively asks this Court to overturn a factual finding, made by the district court and accepted by the Ninth Circuit, without even a nod in the direction of the governing standards of review. The Solicitor General would have the Court depart from its very role as "'[a] court of law'" and veer toward "a court for correction of errors in fact finding"—without even identifying a factual error of any sort. *Exxon*, 517 U.S. at 841.

That is untenable. It is also unnecessary. This Court can clarify the standard for contempt—and decide the issue of "spirit"—without an inappropriate detour into otherwise unchallenged factual determinations.

2. Apple invokes the district court's liability opinion to urge that the injunction targets only the "anti-steering guidelines" responsible for the "'informational harm[s]'" the district court condemned. Apple. Br. 33. That is wrong twice over.

First, Apple is wrong to suggest that the district court addressed only informational harm. The court expressly held that Apple *also* violated the UCL "because [Apple's] anti-steering has the effect of *preventing substitution* among platforms for transactions." J.A. 376-377. The harm thus was preventing substitution, not just impeding information. Nor is the text of the injunction so limited as Apple would suppose. Had the court intended only to forbid Apple from maintaining its "anti-steering guidelines," Apple. Br. 33, it would have said so. Instead, the court forbade Apple from "prohibiting" developers from using their apps to direct users to alternative purchasing platforms—*regardless* of the means used. See pp. 13-15, *supra*. Apple then turned around and effectively prevented substitution once again, this time by making it pro-

hibitively expensive for developers to offer linked-out purchases.

Second, Apple seems to imply that an otherwise facially broad injunction should be limited to the precise conduct the district court initially found unlawful. That is incorrect. The fair-ground-of-doubt standard is an "*objective* one" that begins with the injunction's text. *Taggart*, 587 U.S. at 561. The text here is broad, so its plain meaning is as well. The injunction does not merely order Apple to stop engaging in the specific violation found by the district court. It enjoins the *wrong* of "prohibiting developers from" directing users to alternative purchasing platforms.[4]

3. Apple's defense of its design restrictions fares no better. Apple. Br. 41-47. For example, Apple's so-called "plain-button" guideline effectively prohibited the use of buttons. See p. 20, *supra*. Apple contends a "button" need not be visible. Apple. Br. 42-43. As the Solicitor General explains, that reading of the injunction would render the separate protection for buttons and links pointless. U.S. Br. 27-28. And contrary to the Solicitor General's suggestion, U.S. Br. 28, no remand is needed for the other de-

[4] Apple concedes that a court may modify or clarify an injunction going forward, Apple. Br. 29-31, but argues that the modification must not "expand the remedy allowed by the adjudicated violation," Apple. Br. 30. That would leave the judicial power at the mercy of well-resourced and inventive litigants that can repeatedly devise and exploit potential ambiguities. Tolerating such "experimentation with disobedience of the law" would "operate to prevent accountability for persistent contumacy." *McComb*, 336 U.S. at 192. This case illustrates "the danger in the attitude * * * that the remedial benefits of a decree will be withheld where the precise arrangement worked out" to circumvent it "was not specifically enjoined." *Id.* at 193. If this Court concludes remand is appropriate, it should permit the district court to take whatever measures it deems appropriate to clarify the decree and prevent further violations.

sign restrictions. As the district court found, and the Ninth Circuit agreed, those restrictions effectively prevent developers from including link-outs to off-app purchasing mechanisms. See pp. 19-22, *supra*. The district court also rejected Apple's asserted security rationale for the design restrictions, Pet. App. 94a-95a, 107a-108a & n.46, and the Ninth Circuit found no "clear error" in the finding that Apple's security justification was "pretextual," Pet. App. 25a. Apple does not contend that those findings are clearly erroneous. This Court may affirm on that basis. *Thigpen*, 468 U.S. at 30.

C. *Amici*'s Experience Confirms That Apple's Requirements Were Prohibitive

Just as Apple predicted and intended, the commission and design restrictions in fact were prohibitive. At the time of the contempt hearing, virtually no developers had opted into Apple's linked-out transaction program. Once those restrictions were removed, developers, including *amici*, started offering links to alternative purchasing mechanisms.

1. Spotify runs one of the most widely used audio-streaming subscription services. Its app has been available on the Apple App Store in the U.S. since 2011. Spotify's ability to grow paid subscriptions depends on telling users what its various plans offer and how to get them. An in-app link to Spotify's own checkout page would be the simplest way to deliver that information. For years, however, Apple closed that option off. Apple's guidelines prevented Spotify from informing its Apple users how to upgrade their subscriptions off-app. The result was a confusing process that kept many potential subscribers from starting a free trial or choosing the paid plan they wanted.

After the district court issued its injunction, Apple imposed new restrictions to continue making it practically

impossible for Spotify to use its app to tell users about purchase options on Spotify's own website—a direct competitor to Apple's own Apple Music product. Spotify has not offered Apple's in-app purchasing option since 2016. As a result, it has not paid the commission Apple charges on in-app purchases for nearly a decade. Thus, when Apple responded to the injunction by imposing a 27% commission for linked-out purchases, it effectively saddled Spotify with a *new* commission when Spotify had previously paid none. And, given Spotify's payment-processing costs, that new 27% commission made linked-out purchases on Spotify's own website more costly than even the 30% commission Apple charges for in-app purchases. That rendered linked-out purchases a non-starter.

When Apple lifted its commission and design restrictions, Spotify was able to tell Apple users where and how to purchase a premium subscription—and users could click a button in the app to go to Spotify's checkout page. The effects were immediate: Within four months of that update, Spotify saw a notable uplift in the rate at which U.S. users converted from free to paid services. Users shown the new interface had a substantially higher rate of conversion compared to those who were not. On Android, where Spotify is free to share pricing and offer purchases using non-Google payment mechanisms, conversion rates from free to paid versions held roughly steady over the same period. Those comparisons show that, in the absence of Apple's design restrictions and commission, linked-out purchases work.

2. Match Group's portfolio apps, including its most popular dating app, Tinder, are free to download. Tinder offers subscription tiers that allow users to access additional features, including "Unlimited Likes," ad-free browsing, and one-time à la carte features such as addi-

tional "Likes" or a "Boost." Match Group's portfolio brands have long offered those services for purchase, using Apple's in-app purchasing platform. But many of them have also long sold services on the web, through their own payment systems. The policies Apple adopted in response to the injunction prohibited Match Group's apps from directing their users to those off-app payment options.

Apple's link restrictions forbade links where Match Group's users would expect them to be. Dating apps like Tinder do not maintain a single, static catalog page that serves as the sole location to purchase their subscription and one-time à la carte offerings. Rather, Match Group's portfolio dating apps present those offerings at triggered events within the app, where users are able to see how they may be used in context. Tinder users who exhaust their allotted "Likes," for example, are prompted to buy more or to subscribe. About three quarters of new Tinder subscriptions on Apple devices in the U.S. are purchased after Tinder shows an offer during app use in response to the user's interaction with a feature on the app; fewer than one in five are purchased from pages the user navigates to specifically to explore or manage subscription options. Yet Apple allowed links "on no more than one app page," and in "a single, dedicated location on such page." J.A. 514.

Apple's mandatory "scare screen" also warned users who selected such a link that App Store features, "such as subscription management and refund requests, will not be available." Pet. App. 100a. That gave the *false* impression that apps like Tinder do not offer subscription-management and refund features of their own. But Tinder has done so for over a decade.

Because Apple's new commission applied to any linked-out purchase made within seven days after a user clicked

an in-app link, Apple was able to charge for nearly every sale a link could generate. Tinder users who subscribe do so quickly, and dating services like Tinder have high user turnover (often because the services succeed in matching users). The typical Tinder subscriber thus stays subscribed for months, not years, and fewer than one in ten stays for a year. Those statistics mean that, for the vast majority of subscriptions by Apple users, Match Group's portfolio brands would pay the 27% commission.

Match Group's portfolio brands' own existing purchasing mechanisms offer significant advantages over paying Apple hundreds of millions of dollars a year in commissions. But the commission and design restrictions Apple imposed made offering linked-out purchases an economic non-starter. Indeed, because the brands' own payment costs on web transactions run about 3% or more of revenue, a sale through a link under Apple's program would have cost them at least as much as the same sale through Apple's in-app purchasing platform (before counting any sale lost to the restrictions described above).

Once Apple lifted its commission and design restrictions, Match Group's portfolio brands could engage in the competition Apple's conduct prevented. Tinder began testing links to web checkout within two weeks, and by October 2025 offered them to all of its Apple users in the U.S. on the subscription tiers that account for most new subscriptions. Today, more than half of Tinder's Apple revenue in the U.S. comes from purchases that began with a link in the app.

3. Microsoft's experience as an Apple app developer confirms that Apple's 27% commission on linked-out purchases "made all alternatives to [in-app purchases] economically non-viable," as the district court found. Pet. App.136a.

Microsoft has long sought to offer users of its apps an alternative purchase option *in the apps themselves*. But Apple's policies prohibited such alternatives. Despite finding that these restrictions harmed competition, the district court here allowed Apple to keep those policies in place. J.A. 449-474. But the injunction nevertheless offered a workable alternative by allowing developers to direct users to *off*-app purchasing options. In Microsoft's experience, such in-app links—while inferior to alternative *in*-app payment options—are crucial to the discoverability and viability of online alternatives to Apple's purchasing platform. Yet Apple's commission was designed to, and did, ensure that developers could not implement such links.

To start, the 27% commission rate ensured that a developer would lose money (relative to using Apple's in-app purchasing option) on every linked-out transaction. To make matters worse, Apple "extend[ed] the commission for a period of seven days after the consumer linked-out of the app." Pet. App. 51a. Apple thus created a mechanism whereby some off-app purchases that did not originate with activity on the app could nonetheless trigger an obligation to pay Apple a commission—simply because the developer included a link within their app. Such a provision effectively operates as a poison pill.

* * * * *

Apple's effort to defeat the injunction worked. "[O]nly 34 developers out of the approximately *136,000* total developers on the App Store" even sought the required permission to include linked-out purchases in their apps; no large developer did so. Pet. App. 114a & n.50 (emphasis added). Indeed, the district court found "no evidence that any developer" *ever actually deployed* the link-out or paid the commission. Pet. App. 20a. That was the inevitable consequence of Apple's restrictions: to end-run the injunc-

tion by *effectively* prohibiting the inclusion of in-app links to off-app payment mechanisms.

Offering users alternative payment mechanisms for digital content has the potential to increase competition over the processing of digital purchases—a significant part of the mobile app economy, totaling billions of dollars annually. There is no longer any dispute that Apple's effort to knee-cap those alternatives was unlawful. Its effort to keep them practically inaccessible means it violated the district court's injunction. Tolerating such conduct would erode public respect for judicial decrees. Apple may not "'make [itself] a judge of the validity of orders which have been issued'" and turn "'"the judicial power of the United States"'" into "'a mere mockery.'" *Young* v. *U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 796 n.8 (1987).

CONCLUSION

The judgment of the Ninth Circuit should be affirmed.

Respectfully submitted.

AARON M. PANNER
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W.
Washington, D.C. 20036
(202) 326-7900

JEFFREY A. LAMKEN
Counsel of Record
MOLOLAMKEN LLP
The Watergate, Suite 500
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
(202) 556-2000
jlamken@mololamken.com

DOUGLAS J. DIXON
HUESTON HENNIGAN LLP
620 Newport Center Drive
Suite 1300
Newport Beach, CA 92660
(949) 226-6741

EUGENE A. SOKOLOFF
MOLOLAMKEN LLP
300 North LaSalle St.
Chicago, IL 60654
(312) 450-6700

BRAM ALDEN
TATE HARSHBARGER
HUESTON HENNIGAN LLP
523 West 6th Street
Suite 400
Los Angeles, CA 90014
(213) 788-4340

JARED LOOPER
MOLOLAMKEN LLP
430 Park Ave.
New York, NY 10022
(212) 607-8160

Counsel for Amici Curiae

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